

1 HONORABLE RICHARD A. JONES
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MYRIAM ZAYAS,

Plaintiff,

v.

WARREN BUFFET,

Defendant.

CASE No. C22-1428-RAJ
ORDER

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I. INTRODUCTION

This matter comes before the Court on Plaintiff's motion for court appointed counsel. Dkt. # 6. For the reasons that follow, the Court **DISMISSES** Plaintiff's complaint and **DENIES** Plaintiff's motion for appointed counsel as moot.

On October 12, 2022, Plaintiff filed this action against Defendant Warren Buffet. Dkt. #5. Plaintiff's claims and request for relief are difficult to decipher, but she appears to allege that she is experiencing heart failure and has suffered due to the wildfires currently present in western Washington. *Id.* at 4. Plaintiff asserts that the wildfires are due to climate change caused by nuclear and coal-burning power plants owned by Defendant. *Id.* Plaintiff seeks to have Defendant close any power plants that he owns and pay for sprinklers to be installed in Washington forests. *Id.* Plaintiff also submitted an

1 application to proceed *in forma pauperis*. Dkt. #1. On October 12, 2022, the Honorable S.
 2 Kate Vaughan granted the application while recommending review under 28 U.S.C. §
 3 1915(e)(2)(B). Dkt. #4. On October 13, 2022, Plaintiff filed an application for court
 4 appointed counsel in this matter. Dkt. # 6.

5 II. DISCUSSION

6 The Court's authority to grant *in forma pauperis* status derives from 28 U.S.C.
 7 § 1915. The Court is required to dismiss an *in forma pauperis* plaintiff's case if the Court
 8 determines that "the action . . . (i) is frivolous or malicious; (ii) fails to state a claim on
 9 which relief may be granted; or (iii) seeks monetary relief against a defendant who is
 10 immune from such relief." 28 U.S.C. § 1915(e)(2)(B); *see also Lopez v. Smith*, 203 F.3d
 11 1122, 1129 (9th Cir. 2000) ("[S]ection 1915(e) applies to all in forma pauperis
 12 complaints, not just those filed by prisoners."). A complaint is frivolous if it lacks a basis
 13 in law or fact. *Andrews v. King*, 398 F.3d 1113, 1121 (9th Cir. 2005). A complaint fails
 14 to state a claim if it does not "state a claim to relief that is plausible on its face." *Bell Atl.*
 15 *Corp. v. Twombly*, 550 U.S. 544, 568 (2007).

16 "The legal standard for dismissing a complaint for failure to state a claim under 28
 17 U.S.C. § 1915(e)(2)(B)(ii) parallels that used when ruling on dismissal under Federal
 18 Rule of Civil Procedure 12(b)(6)." *Day v. Florida*, No. 14-378-RSM, 2014 WL 1412302,
 19 at *4 (W.D. Wash. Apr. 10, 2014) (citing *Lopez*, 203 F.3d at 1129). Rule 12(b)(6) permits
 20 a court to dismiss a complaint for failure to state a claim. The rule requires the court to
 21 assume the truth of the complaint's factual allegations and credit all reasonable inferences
 22 arising from those allegations. *Sanders v. Brown*, 504 F.3d 903, 910 (9th Cir. 2007). The
 23 plaintiff must point to factual allegations that "state a claim to relief that is plausible on
 24 its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 568 (2007). Where a plaintiff
 25 proceeds *pro se*, the Court must construe the plaintiff's complaint liberally. *Johnson v.*
 26 *Lucent Techs. Inc.*, 653 F.3d 1000, 1011 (9th Cir. 2011) (citing *Hebbe v. Pliler*, 627 F.3d
 27 338, 342 (9th Cir. 2010)).

1 Taking all allegations in the light most favorable to the Plaintiff, the Court finds
2 that the Complaint fails to state a claim upon which relief can be granted. In her
3 complaint, Plaintiff alleges that she has been “suffering immensely” due to climate
4 change and attributes climate change and ongoing wildfires to Defendant, who “wants to
5 keep burning fossil fuel.” Dkt. #5 at 4. Plaintiff cites to the “Intergovernmental Panel on
6 Climate Change,” which Plaintiff states has found that fossil fuels are the “dominant
7 cause of global warming.” *Id.* While the complaint does not make clear how climate
8 change and the Washington wildfires are specifically connected to any alleged actions by
9 Defendant, Plaintiff goes on to claim that “if Defendant does not own all the power
10 plants, [Plaintiff] has already filed a claim against the United States, who [Plaintiff]
11 assumes owns the rest.” *Id.*

12 Although *pro se* litigants are given more leeway than licensed attorneys when
13 assessing their pleadings, they must still adhere to the Federal Rules of Civil Procedure.
14 *Pearle Vision, Inc. v. Romm*, 541 F.3d 751, 758 (7th Cir. 2008). Plaintiff simply does not
15 state a plausible claim for which any type of relief could be granted by this Court, and
16 there is no reasonable basis for concluding that the deficiencies in the proposed complaint
17 could be cured by amendment. Therefore, the Court dismisses the complaint for failure
18 to state a claim on which relief may be granted pursuant to 28 U.S.C. § 1915(e)(2)(B).
19 Given that the Court will dismiss Plaintiff’s complaint without leave to amend, Plaintiff’s
20 application for appointed counsel is rendered moot.

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III. CONCLUSION

For the reasons stated above, Plaintiff's complaint is **DISMISSED** with prejudice. Dkt. #5. Further, Plaintiff's application for appointed counsel is **DENIED** as moot. Dkt. #6.

DATED this 17th day of October, 2022.

Richard D. Jones

The Honorable Richard A. Jones
United States District Judge